IN THE COURT OF APPEALS OF IOWA

No. 2-404 / 91-1766

FILED
MAY 25 1993
CLERK SUPREME COURT

IN RE THE MARRIAGE OF CAROL POST AND DAVID A. POST

Upon the Petition of
CAROL POST,

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Appellant/Cross-Appellee,

And Concerning
DAVID A. POST,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Montgomery County, J. C. Irvin, Judge.

The wife appeals and the husband cross-appeals the economic provisions of the parties' dissolution decree. **AFFIRMED.**

Steven H. Krohn of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellant.

J.C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

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SCHLEGEL, J.

David and Carol Post were married on January 27, 1964. Four children were born of the marriage. The two older children are adults and are not subject to the terms of the dissolution decree. Only the two younger children, Renae, born in November 1973, and Andrea, born in July 1979, were minors at the time of the decree.

Carol was forty-three at the time of the dissolution trial. Carol is a high school graduate with one year of college and is a trained beautician. Carol has worked as a bookkeeper and buyer for Fountain Square Pharmacy, the parties' pharmacy in Red Oak.

David was forty-four at the time of the dissolution trial. He is a pharmacist, and he operates the Fountain Square Pharmacy. The parties also own a pharmacy in Harlan with a corporate name of David A. Post, Inc. and the business name Norgaard's.

Following trial the district court, in February 1991, entered its dissolution decree. The court awarded physical care of the parties' two minor children to Carol and ordered David to pay $900 per month child support. The court also made provisions for the operation of the parties' businesses pending final resolution of these issues.

A subsequent trial was held concerning the final disposition of the parties' property. In August 1991 a supplemental decree was filed. The court determined that

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Fountain Square Pharmacy had a net value of $73,000. The court awarded Carol property with a net value of $59,000, which included the marital residence. David was awarded property with a net value of about $82,000, which included Fountain Square Pharmacy and Norgaard's. David was required to pay Carol $16,200 as a cash property settlement. Thus, Carol was awarded total property worth approximately $75,200, and David was awarded approximately $65,800.

David was ordered to pay alimony of $750 per month for 120 months or until the death of Carol or her remarriage or cohabitation with an adult male. David was required to pay $2,000 of Carol's attorney fees and $150 for an expert witness.

In a subsequent order, the district court modified the alimony award to allow Carol to petition the court within sixty days of her remarriage or cohabitation to permit continuation of alimony. Carol appealed, and David cross-appealed.

I. Scope of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

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II. Property Division.

Carol contends the district court did not properly value Fountain Square Pharmacy. She complains that the court used "book value" as opposed to fair market value. She claims the company has a value of at least $350,000. She believes a purchaser would assume the company's debts of $249,000.

Generally, stock should be valued at its market value if it can be reasonably ascertained. In re Marriage of Moffatt, 279 N.W.2d 15, 19 (Iowa 1979). Black's Law Dictionary defines "fair market value" as the amount at which property would change hands between a willing buyer and a willing seller.

We determine the district court did determine the fair market value of Fountain Square Pharmacy. David's expert testified the company could be sold for an amount between $320,000 to $340,000. Carol's expert testified $338,000 was a realistic value for the company. If the company was sold for about $322,000 and the debts of $249,000 were paid from that amount, the parties would have $73,000, which is the value given to the property by the district court.

Neither expert testified a purchaser would assume the company's debts. David's expert specifically stated a buyer would not assume the liabilities. The liabilities would then remain the responsibility of the seller and should be subtracted from the fair market value to obtain a net value for the company. We conclude the value given to

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the company by the district court is well within the permissible range of the evidence, and we will not disturb it on appeal. See In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991).

Carol also contends the division of property was not equitable to her. She asks for an additional $100,000 as a property settlement. In his cross-appeal, David contends the division of property is inequitable to him. He asks us to eliminate the cash property settlement of $16,200 and relieve him of the responsibility for certain debts.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. Id. The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We determine the property division as set forth by the district court is equitable, and we affirm it.

III. Alimony.

Carol claims she should be awarded a greater amount of alimony. She asks for $2,000 per month for fifteen years. She points out that her earning capacity is less than that of David. David asks us to eliminate the award of alimony entirely.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989). When determining

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the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

Carol claimed David's income was about $80,000. This is the amount of income David and Carol earned together from operating the pharmacies. As David points out, he will now have to hire a bookkeeper and someone to manage the gift and cosmetic part of the business. Therefore, his income will be less than $80,000. We determine the evidence showed David's income is $57,000, or $4,750 per month. The district court found Carol had the ability to earn $10,000 to $12,000. Carol acquired bookkeeping skills during the marriage because she did the bookkeeping for Fountain Square Pharmacy. And as mentioned, she has experience managing the gift and cosmetic portion of the pharmacy. We conclude the award of alimony is appropriate under the facts in this case.

Carol additionally claims the court placed an improper restriction on the award of alimony. The court placed the burden upon her to bring an action to prevent automatic termination of the alimony award in the event of her remarriage of cohabitation. We find this provision is equitable and we affirm.

IV. Child Support.

Carol claims the award of child support was not sufficient. She again argues that David has the ability to earn $80,000. Based upon this income David's child support obligation under the guidelines would be $1,500 per month.

There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. In re Marriage of Bergfeld, 465 N.W.2d 865, 870 (Iowa 1991). The court must determine the parent's current monthly income from the most reliable evidence presented. In re Marriage of Powell, 474 N.W.2d 531, 534 (Iowa 1991). This often requires the court to carefully consider all of the circumstances relating to the parent's income. Id.

We have already determined David's income is $57,000. We agree with the district court's finding that his net monthly income is about $3,000 and his child support obligation should be $900 per month. We affirm the award of child support.

V. Attorney Fees.

Carol contends the award of trial attorney fees was not adequate. The court awarded her $2,000 in attorney fees and $150 for expert witness fees. Carol contends she should have been awarded the full amount of her attorney fees, $7,500, and expert witness fees, $1,288.50. David asks that the award of attorney fees be eliminated.

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Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id.

We find the district court did not abuse its discretion in this case. Carol received $2,000 before trial for her attorney fees in addition to the $2,000 awarded in the decree.

In summary, we have affirmed the district court on all issues raised by the parties. Each party should pay his or her own attorney fees. Costs in this case should be assessed one-half to each party.

AFFIRMED.